United Nations CCPR/C/NPL/CO/2

International Covenant on Civil and Political Rights

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Human Rights Committee

Concluding observations on the second periodic report of Nepal*

1. The Committee considered the second periodic report submitted by Nepal (CCPR/C/NPL/2) at its 3050th and 3051st meetings (CCPR/C/SR.3050 and CCPR/C/SR.3051), held on 18 and 19 March 2014. At its 3061st meeting (CCPR/C/SR.3061), held on 26 March 2014, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the second periodic report of Nepal, which was due in 1997, and the information presented therein. It expresses appreciation for the opportunity to engage in a constructive dialogue with the State party's delegation on the measures that the State party has taken since its last review in 1994 to implement the provisions of the Covenant. The Committee is grateful to the State party for its written replies (CCPR/C/NPL/Q/2/Add.1) to the list of issues, which were supplemented by the oral responses provided by the delegation.

B. Positive aspects

3. The Committee welcomes the following legislative and institutional steps taken by the State party:

(a) The signing of the Comprehensive Peace Accord in 2006;

(b) The adoption of the interim Constitution in 2007;

(c) The introduction of a third gender in various official documents, including citizenship certificates, pursuant to the Supreme Court judgment of 21 December 2007; and

(d) The establishment of the second Constituent Assembly in January 2014 and the appointment of the Cabinet in February 2014.

4. The Committee welcomes the ratification by the State party of the following international instruments:

* Adopted by the Committee at its 110th session (10–28 March 2014).

(a) The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty in 1998;

(b) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict in 2006;

(c) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography in 2007;

(d) The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women in 2007;

(e) The United Nations Convention against Transnational Organized Crime in 2006 and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the Convention, in 2008; and

(f) The Convention on the Rights of Persons with Disabilities and its Optional Protocol in 2010.

C. Principal matters of concern and recommendations

Impunity for gross violations committed during the conflict

5. The Committee is concerned at the prevailing culture of impunity for gross violations of international human rights law and serious violations of international humanitarian law committed during the 10-year conflict from 1996 to 2006, including extrajudicial killings, enforced disappearances, torture, sexual violence and arbitrary detention. In particular, it expresses concern at:

(a) The lack of investigation and prosecution of perpetrators, exacerbated by political interference in the criminal justice system, such as the refusal by the police to register First Information Reports, pressure exerted on law enforcement officials not to investigate or prosecute certain cases, and extensive withdrawal of charges against persons accused of human rights violations, noting that not a single conflict related case has been successfully prosecuted through the criminal justice system;

(b) The denial of effective remedies to victims, noting that only limited monetary forms of assistance have been provided to some victims or their relatives under the Interim Relief Programme, while others have been excluded, including victims of torture, rape and other forms of sexual violence; and

(c) The lack of a vetting system to exclude persons accused of serious human rights violations from holding public office and the practice of promoting such individuals instead (arts. 2, 3, 6, 7, 9, 10 and 16).

The State party should:

(a) Ensure that all gross violations of international human rights law, including torture and enforced disappearances, are explicitly prohibited as criminal offences under domestic law;

(b) End all forms of political interference in the criminal justice system and undertake independent and thorough investigations into alleged conflict-related cases of human rights violations, and hold the perpetrators accountable without any further delay. The Committee stresses that transitional justice mechanisms cannot serve to dispense with the criminal prosecution of serious human rights violations;

(c) Create, as a matter of priority and without further delay, a transitional justice mechanism in accordance with the Supreme Court writ of mandamus of 2 January 2014 and ensure its effective and independent functioning in accordance with international law and standards, including by prohibiting amnesties for gross

violations of international human rights law and serious violations of international humanitarian law;

(d) Ensure that all victims are provided with an effective remedy, including appropriate compensation, restitution and rehabilitation, taking into account the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (General Assembly resolution 60/147); and

(e) Adopt guidelines for vetting to prevent those accused of violations of the Covenant from holding public office and being promoted.

Views adopted under the first Optional Protocol to the Covenant

6. While welcoming the commitment expressed by the State party delegation to fully implement the Views of the Committee adopted under the first Optional Protocol, and noting that "interim relief" has been provided to some victims, the Committee expresses concern at the failure of the State party to implement the Views of the Committee (art. 2).

The Committee urges the State party to take concrete steps to give full effect to all Views on individual communications adopted by the Committee, in particular by conducting prompt, thorough and independent investigations, prosecuting those responsible, and providing effective remedies and reparation to victims without any further delay. The Committee reiterates that transitional justice mechanisms are not sufficient to dispense with the criminal prosecution of serious human rights violations.

National Human Rights Commission (NHRC)

7. The Committee is concerned at the introduction of restrictions to the independent and effective functioning of the NHRC through the adoption of the National Human Rights Act in 2012. While noting the Supreme Court decision of 6 March 2013 which declared various provisions of the Act null and void, the Committee regrets the lack of progress in bringing the Act in line with the Paris Principles. It also regrets the inadequate implementation of the recommendations issued by the NHRC, despite the fact that they are binding under domestic law (art. 2).

The State party should amend the National Human Rights Act 2068 (2012) to bring it in line with the Paris Principles (General Assembly resolution 48/134, annex) and the Supreme Court decision of 6 March 2013 so as to ensure its independent and effective functioning. It should also amend procedures governing the appointment of Commissioners to ensure a fair, inclusive and transparent selection process, and ensure that the recommendations issued by the NHRC are effectively implemented.

Gender equality

8. While noting the steps taken by the State party to promote gender equality, the Committee expresses concern at the extremely low representation of women, particularly Dalit and indigenous women, in high-level decision-making positions. The Committee regrets the persistence of patriarchal attitudes and deep-rooted stereotypes that perpetrate discrimination against women in all spheres of life, and the prevalence of harmful traditional practices such as child marriage, the dowry system, son preference, witchcraft accusations and *chaupadi* (arts. 2, 3 and 26).

The State party should take all necessary measures to effectively implement and enforce the existing legal and policy frameworks on gender equality and non-discrimination, pursue its efforts to increase the representation of women in decision-making positions, and develop concrete strategies to eliminate gender stereotypes on the role of women, including through public awareness campaigns. It should also take appropriate measures to (a) explicitly prohibit all forms of harmful traditional

practices in domestic law and ensure its effective implementation in practice; (b) conduct awareness-raising campaigns on the prohibition and negative effects of such practices, particularly in rural areas; and (c) encourage reporting of such offences, investigate complaints from victims and bring those responsible to justice.

Caste-based discrimination

9. While welcoming the adoption of the Caste-based Discrimination and Untouchability (Offence and Punishment) Act in 2011, the Committee remains concerned at the lack of its effective implementation and the persistence of *de facto* discrimination against the Dalit community. It also regrets the lack of sufficient resources provided to the National Dalit Commission and the failure to effectively implement its recommendations (arts. 2 and 26).

The State party should strengthen its measures to implement the Caste-based Discrimination and Untouchability (Offence and Punishment) Act and to eliminate all forms of discrimination against the Dalit community. It should also ensure that the National Dalit Commission can carry out its mandate effectively with sufficient resources, and that its recommendations are effectively implemented.

Extrajudicial killings, torture and ill-treatment

10. The Committee is concerned at reports of unlawful killings in the Terai region, deaths in custody, and the official confirmation of the widespread use of torture and ill-treatment in places of police custody. It is deeply concerned at the failure of the State party to adopt legislation defining and criminalizing torture, and at the lack of concrete and comprehensive information on investigations, prosecutions, convictions, sanctions imposed on those responsible, and the impunity of law enforcement officials involved in such human rights violations (arts. 2, 6, 7, 9, 10 and 14).

The State party should take practical steps to prevent the excessive use of force by law enforcement officials by ensuring that they comply with the Code of Conduct for Law Enforcement Officials (General Assembly resolution 34/169) and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990). It should take appropriate measures to eradicate torture and ill-treatment, including by adopting legislation defining and prohibiting torture with sanctions and remedies commensurate with the gravity of the crime, in accordance with international standards. It should also ensure that law enforcement personnel receive training on the prevention and investigation of torture and ill-treatment by integrating the Manual on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol). The State party should ensure that allegations of unlawful killings, torture and ill-treatment are effectively investigated, and that alleged perpetrators are persecuted and, if convicted, punished with appropriate sanctions, and that the victims and their families are provided with effective remedies.

Arbitrary detention

11. While noting that article 24 of the interim Constitution affords some legal guarantees to persons deprived of their liberty, such as the right to be informed of the grounds of their arrest and access to a court within 24 hours, the Committee expresses concern at the failure to respect such rights in practice. It also expresses concern at the lack of effective guarantees, in law and in practice, of the rights of detainees to notify their immediate family members about their detention and to have access to a doctor from the moment of arrest, as well as the practice of maintaining false or inadequate custody records and keeping detainees in unofficial places of detention (arts. 9, 10 and 14).

The State party should take appropriate measures to ensure that no one under its jurisdiction is subject to arbitrary arrest or detention and that detained persons enjoy all legal guarantees, in compliance with articles 9 and 14 of the Covenant. It should also publish all official places of detention on a regular basis and explicitly forbid and criminalize the use of unofficial places for detention.

Conditions of detention

12. While welcoming the introduction of the concept of open prisons and a community prison system, the Committee expresses concern at overcrowding in prisons and jails, unsanitary conditions of detention, and inadequate provision of basic services and facilities, including medical care and adequate facilities for confidential meetings with lawyers (arts. 9 and 10).

The State party should take urgent measures to establish a system of regular and independent monitoring of places of detention and to reduce overcrowding and improve conditions of detention, in line with the Standard Minimum Rules for the Treatment of Prisoners. In this regard, the State party should consider not only the construction of new prison facilities but also the application of alternative measures to pretrial detention, such as bail and home arrest, and non-custodial sentences, such as suspended sentences, parole and community service. The State party should also establish a confidential mechanism for receiving and processing complaints lodged by detainees.

Violence against women

13. While noting the adoption of various laws and policies aimed at eliminating violence against women, the Committee expresses concern at their weak implementation, lack of a comprehensive system to collect data on cases of different types of violence against women, and continuing reports of widespread sexual and domestic violence against women and girls. It is also concerned at the narrow definition of rape, the lack of progress in abolishing the 35-day limitation period for filing complaints of rape, and disproportionately low penalties for marital rape. The Committee further regrets the ongoing failure by the police to register complaints, investigate and prosecute rape cases, and the trend of such cases being diverted to settlement through informal justice mechanisms (arts. 2, 3 and 7).

The State party should ensure that all forms and manifestations of violence against women are defined and prohibited under domestic law with sanctions commensurate with the gravity of the offence, in accordance with international standards. It should establish a comprehensive national data collection system on cases of different types of violence against women to enable the State party to adopt targeted strategies and evaluate their effectiveness. It should also conduct awareness-raising campaigns on the negative effects of violence against women, inform women of their rights and existing mechanisms of protection, and facilitate complaints from victims. The State party should further ensure that cases of violence against women are thoroughly investigated, perpetrators are prosecuted and, if convicted, punished with appropriate sanctions, and that victims have access to effective remedies and means of protection.

Refugees

14. While commending the State party for hosting a large number of refugees and asylum-seekers in its territory, the Committee is concerned that identity documents have not been provided to Tibetan refugees since 1995, which places the majority of the Tibetan refugee population at risk of financial penalties under the 1994 Immigration Rules for irregular entry or presence in the State party, detention, deportation and refoulement. It also expresses concern at the restrictions imposed on Tibetan refugees' rights should the State party deem any activity to undermine the friendly relationship with its neighbour. The

Committee is also concerned about the lack of legislation that would ensure adequate protection against refoulement (arts. 2, 7, 9, 13, 19, 26 and 27).

The State party should adopt national refugee legislation in accordance with international standards, strictly uphold the principle of non-refoulement, and exempt refugees and asylum-seekers from penalties under the 1994 Immigration Rules. It should undertake a comprehensive registration exercise of long-staying Tibetans to ensure that all persons have proper documentation and ensure, in law and in practice, that all refugees and asylum-seekers are not subjected to arbitrary restrictions of their rights under the Covenant, including freedom of expression, assembly and association. It should also guarantee access to its territory to all Tibetans who may have a valid refugee claim and refer them to the Office of the United Nations High Commissioner for Refugees.

Corporal punishment

15. While noting the adoption of the National Children Policy in 2012, the Committee notes that corporal punishment remains a concern, especially in the home, where it traditionally continues to be practiced as a form of discipline by parents and guardians (arts. 7 and 24).

The State party should take practical steps, including through legislative measures where appropriate, to put an end to corporal punishment in all settings. It should encourage non-violent forms of discipline as alternatives to corporal punishment, and should conduct public information campaigns to raise awareness about its harmful effects.

Fair trial

16. The Committee is concerned at the failure to respect the right to remain silent in practice, lack of legal clarity concerning the inadmissibility of evidence obtained as a result of coercion, and the inadequate provision of legal aid services. It also reiterates its previous concern regarding the quasi-judicial authority of Chief District Officers (CDOs), whose dual capacity as members of the executive and judiciary in criminal cases contravenes article 14 of the Covenant.

The State party should take effective measures to guarantee the right to a fair trial, in accordance with article 14 of the Covenant and general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial. In particular, the State party should effectively ensure the right to remain silent in practice, amend the Evidence Act to clarify that no defendant should be compelled to give evidence and ensure that evidence which is the result of coercion is inadmissible, and ensure that right to legal aid under domestic law is guaranteed in practice. It should also limit the judicial authority of CDOs to cases of minor gravity and amend the laws granting CDOs judicial authority in line with the requirements under article 14 of the Covenant.

Juvenile justice

17. The Committee expresses concern at the low age of criminal responsibility set at 10 years, and the systematic failure to accord children the right to a fair trial with effective procedural guarantees appropriate to their ages. It also regrets the failure to fully implement the 1992 Children's Act which calls for the establishment of an independent juvenile court (art. 14).

The State party should raise the minimum age of criminal responsibility to an acceptable level under international standards, and establish an independent juvenile

court to take into account their age and the desirability of promoting their rehabilitation.

Trafficking and bonded labour

18. The Committee expresses concern at the lack of effective implementation of the Human Trafficking and Transportation (Control) Act of 2007, and the persistence of trafficking for purposes of sexual exploitation, forced labour, bonded labour, domestic servitude and marriage, as well as trafficking in human organs. It is also concerned at the alleged involvement of State officials in trafficking-related crimes. The Committee is further concerned that child labour and traditional practices of bonded labour such as Haliya, Kamaiya and Kamlari are still prevalent in some regions of the State party (arts. 8 and 24).

The State party should strengthen its efforts to prevent, suppress and punish trafficking in persons, trafficking in human organs and bonded labour, including the establishment of a system of data collection and analysis to identify trends and implement effective strategies, and adoption of measures aimed at empowering vulnerable groups to eliminate their risk of exploitation. It should also ensure the effective implementation of the Human Trafficking and Transportation (Control) Act of 2007, prosecute and sanction perpetrators, including State officials complicit in trafficking-related crimes, and provide victims with adequate protection and assistance.

Freedom of expression

19. The Committee expresses concern at vague and overbroad restrictions to the right to freedom of expression under article 12 of the Interim Constitution, and at reports that journalists and human rights defenders are subjected to physical attacks, death threats, harassment and reprisals by security forces, police, armed groups and youth wings of political parties (art. 19).

The State party should guarantee, in law and in practice, the right to freedom of expression to all individuals, including non-citizens, and ensure that any restriction to the right is in compliance with the restrictions as set out in article 19, paragraph 3 of the Covenant and the Committee's general comment No. 34 (2011) on freedoms of opinion and expression. It should also investigate all cases of threats and attacks against journalists and human rights defenders, hold the perpetrators accountable, and provide effective remedies to victims.

Birth registration and nationality

20. The Committee, while appreciating efforts made thus far, expresses concern at the low number of birth registrations, particularly in rural areas, and at difficulties faced by women in the registration process. It also regrets that the current legislation does not provide for the granting of nationality to children born in the territory who would otherwise be stateless. Moreover, while welcoming the launch of national distribution campaigns, the Committee is concerned that more than 4 million persons still lack citizenship certificates, which is essential for the enjoyment of rights guaranteed in the Covenant, including the right to vote. It is also concerned that women are denied equal rights as men with respect to acquiring and conferring nationality (arts. 3, 16, 24, 25 and 26).

The State party should amend the Birth, Death and Other Personal Incidents Registration Act to ensure the birth registration of all children born on its territory, and establish an efficient birth registration system that is free of charge at all stages. It should also continue to strengthen efforts to remove barriers, particularly for women and those living in rural areas, to access citizenship certificates and birth registrations. The State party should ensure that citizenship provisions of the new

Constitution guarantee the equal right of women to acquire, transfer and retain citizenship.

21. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, relevant information on its implementation of the Committee's recommendations made in paragraphs 5, 7 and 10 above.

22. The Committee requests the State party, in its next periodic report, due to be submitted on 28 March 2018, to provide, specific, up-to-date information on all its recommendations and on the Covenant as a whole.